The Office Action requested Applicant to resubmit the references identified in the information disclosure statement filed 11 April 2001; rejected claims 10 and 11 under 35 USC §102(e) as being anticipated under United States Patent No. 5,891,427 to Mettler ("Mettler"); and rejected claims 13 – 15 under 35 USC §103(a) as being unpatentable over United States Patent No. 6,244,265 to Cronk, et al. ("Cronk"). Claims 10, 11, and 13 - 15 remain pending in this application after entry of this response.

As requested in the Office Action, Applicants attach hereto is a copy of the Form 1449 that was filed with the information disclosure statement on 11 April 2001. Applicants also attach copies of the references having citations thereon that were not initialed by the Examiner. Applicants respectfully request the Examiner to provide Applicants with a revised, initialed Form 1449 indicating that copies of all cited references were received and reviewed.

The Rejection of Claims 10 and 11 Under
35 U.S.C. §102(e) Over Mettler Has Been Overcome

Claims 10 and 11 stand rejected under 35 U.S.C. §102(e) as being anticipated by Mettler. Applicants respectfully disagree for the reasons that follow.

Mettler discloses an air freshener and room deodorizer that may contain "[a]ny fragrance oil such as wood, such as pine scent, orange..." See Mettler, column 3, lines 33 – 45 (emphasis added). These oils are used in an amount of "0.75% to 2.5% by weight of the composition." See Id., at lines 42 – 44.

By contrast, claim 10 is directed to an "effective amount of a sensory fragrance" As set forth in the Specification, the "term 'effective amount' refers to the percentage by weight of the sensory fragrance... which is needed to create the desired response in a mammal.... Examples of desired responses include improved sleep, increased calmness, increased relaxation, and increased smiling. Preferably the effective amount is less than about 30 %." Specification, page 4, lines 3 – 10.

Mettler fails to disclose or suggest with any specificity the use of a particular type of fragrance, let alone the use of a "sensory fragrance" capable of creating any of the above desired responses. In fact, Mettler neither discloses nor suggests: 1) the creation of any of the above desired responses, whether through the use of a sensory fragrance or otherwise; or 2) the "effective amount" of such a sensory fragrance necessary to achieve such responses. Rather, Mettler teaches the incorporation of any fragrance oils for a completely different

purpose, i.e., as a carrier for the delivery of vitamins to the occupants of a room. See Mettler, Column 1, lines 10 – 12. Moreover, Mettler fails to disclose or suggest the claimed personal care composition "capable of reducing the cortisol level of the mammal by about 0.1 to about 75% and/or increasing the sIgA level of the mammal by about 10% to about 150%" as claimed in claim 10.

In addition, claim 10 is directed to a method of **soothing** a mammal (emphasis added). Not only does Mettler fail to disclose or suggest the concept of "soothing", but it also teaches away from achieving such a response. More specifically, Mettler teaches the use of fragrances that are known to stimulate, such as lemon and lime. The use of such fragrances would achieve the opposite of the claimed "soothing" response. See Mettler, column 11, line 14.

Rejections under 35 USC §102 are proper only when the claimed subject matter is identically disclosed or described in the prior art. In re Marshall, 198 USPQ 344 (CCPA 1978). In other words, to constitute an anticipation, all material elements recited in a claim must be found in one unit of prior art. Id. The exclusion of a claimed element from a prior art reference is enough to negate anticipation under 35 USC §102 by that reference. Atlas Powder Co. v. E.I. Du Pont de Nemours & Co., 224 USPQ 409 (Fed. Cir. 1984).

Therefore, because Mettler neither discloses nor suggests several elements claimed in claim 10, i.e., e.g., "soothing" via administration of an "effective amount" of a "sensory fragrance", wherein the composition is capable of "of reducing the cortisol level of the mammal by about 0.1 to about 75% and/or increasing the sIgA level of the mammal by about 10% to about 150%," Applicants respectfully submit that the rejection of claim 10 under 35 USC §102(e) over Mettler has been overcome and should be withdrawn.

For similar reasons, Applicants respectfully submit that the rejection of claim 11, which is dependent upon claim 10 and includes all of its limitations therein, under 35 USC §102(e) over Mettler has also been overcome and should be withdrawn.

The Rejection of Claims 13 - 15 under
35 USC §103(a) Over Cronk Has Been Overcome

Claims 13 - 15 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Cronk. Applicants respectfully disagree for the reasons that follow.

According to the Office Action, "[i]t would have been obvious to one of ordinary skill in the art at the time the invention was made through routine experimentation to determine the preferred concentrations of the fragrance to achieve the desired effect." However, such a

statement overlooks the second sentence of 35 USC §103. Rather, the issue is whether such experimentation is within the teachings of the prior art. See In re Waymouth, 182 USPQ 290 (CCPA 19740. Applicants respectfully submit that obviousness does not, and cannot exist if the prior art neither indicates which of the disclosed parameters are critical nor provides any direction as to which of many choices is likely to be successful. See Merck & Co., Inc. v. Biocraft Labs., Inc., 10 USPQ.2d 1843 (Fed. Cir. 1989).

Cronk is directed to nasal strip and dilator **devices** that contain aromatic substances, such as any of the fragrances listed in Cronk on Column 9, line 35 to column 11, line 29. It is clearly evident that Cronk neither discloses nor suggests a "**personal care composition**" as claimed in claims 13 to 15.

In addition, Cronk fails to disclose or suggest: 1) the use of a "sensory fragrance", capable of creating any of the above desired responses; 2) the use of particular components in a "sensory fragrance" that would be capable of creating any of the above desired responses; 3) the amount of such particular components in a "sensory fragrance" that would be capable of creating any of the above desired responses; 4) the creation of any of the above desired responses, whether through the use of a sensory fragrance or otherwise; 5) the "effective amount" of such a sensory fragrance necessary to achieve such responses; and 6) the claimed personal care composition "capable of reducing the cortisol level of the mammal by about 0.1 to about 75% and/or increasing the sIgA level of the mammal by about 10% to about 150%".

More specifically, Cronk neither discloses nor suggests the particular amounts of essential oils and odoriferous portion necessary to achieve such a sIgA concentration increase and or cortisol decrease as claimed in claim 14. Cronk also fails to disclose or suggest the claimed benzenoid materials, aldehyde materials, ester materials, ketone materials, citronellol, alcohol C-8, alcohol C-10, alcohol C-11, alcohol c12, linalool, geranoil, benzyl alcohol, 2-ethyl-4-(2,2,3-trimethyl-3-cyclopentene-1-yl)-2-buten-l-ol, dihydromyrcenol, as claimed in claim 15.

Because the prior art fails to indicate which parameters and components are critical and fails to provide any direction as to which of many possible choices is likely to be successful to create, for example, the "sensory fragrances" or a composition capable of "reducing the cortisol level of the mammal by about 0.1 to about 75% and/or increasing the sIgA level of the mammal by about 10% to about 150%," then Applicants respectfully submit that the fact that the claimed combination may fall within the scope of possible combinations allegedly taught by the prior art does not render the claimed combination unpatentably obvious. See In re O'Farrell, 7 USPQ 1673 (Fed. Cir. 1988).

Moreover, the Office Action provided that the obvious rejection of claims 13 – 15 may be overcome with a clear showing of an "unexpected result attributable to the specific concentrations of fragrances as employed by applicant in the instant invention." Applicants respectfully submit that such unexpected results are demonstrated in the Examples provided in the Specification.

Claim 13 is directed to a particular personal care composition "capable of reducing the cortisol level in a mammal by about 0.1 to about 75% and/or increasing the sIgA level in the human by about 10% to about 150%." For example, Examples 10 and 11 in the Specification demonstrated that the average sIgA increase for those who inhaled a composition containing the sensory fragrance increased by about 47%, whereas the average sIgA increase for those who inhaled the unfragranced materials was only about 2%. In addition, as set forth in Example 13, the panelists who participated in the studies of Example 10 (sensory fragrance), Example 11 (no sensory fragrance), Example 12 (no sensory fragrance in bath), and Example 13 (sensory fragrance in bath), also responded via a questionnaire as to how they felt after completion of their respective study. As shown in Table XI, those "panelists who inhaled the sensory fragrances (either with or without a bath) felt better and had a more positive experience than those panelists who did not inhale the sensory fragrance." Clearly, these examples further demonstrate that the sensory fragrances of the present invention are effective in increasing sIgA concentrations and/or in reducing cortisol and unexpectedly provide users with a more positive experience, e.g. feeling of relaxation and less stress.

Therefore, in view of the fact that Cronk is directed to devices and not to the claimed "personal care compositions," and further in view of the unexpected results provided in the Specification as well as the failure of the prior art to provide any parameters for locating several of the claimed elements such as, for example, "effective amount, "sensory fragrance," and the claimed personal care composition "capable of reducing the cortisol level in a mammal by about 0.1 to about 75% and/or increasing the sIgA level in the human by about 10% to about 150%," as well as the particular components of the sensory fragrance and the amounts thereof as set forth more specifically in claims 14 and 15, Applicants respectfully submit that the rejection of claims 12 – 15 under 35 U.S.C. §103(a) as being unpatentable over Cronk has been overcome and should be withdrawn.

Conclusion

It is submitted that the foregoing amendments and remarks place the case in condition for allowance. A notice to that effect is earnestly solicited.

Respectfully submitted,

By: _____
Michele G. Mangini
(Attorney for Applicants)
Reg. No. 36,806
Dated: 21 March 2002

Johnson & Johnson
One Johnson & Johnson Plaza
New Brunswick, NJ 08933-7003
(732) 524-2810

JBP521New.amt.2